

Definition:

Replacement Cost: Cost of replacing a structure or building at current costs at the time of the loss, identical to the one that was destroyed, without application of depreciation.

ARTICLE XXII – NONCONFORMING LOTS, USES, AND STRUCTURES
(article amended 4/06)

SECTION 2200: INTENT

Upon the adoption of this Ordinance or future amendments, there may exist lots, structures, and uses of land and structures which were lawful prior to the adoption of the Zoning Ordinance, or amendment to the Ordinance, but which are not in conformance with the provisions of this Ordinance, or any amendments. It is the intent of this Ordinance to permit these nonconforming lots, structures and uses to continue until they are removed, but not to encourage their survival. Because nonconforming lots, structures and uses, so long as they exist, prevent the full achievement of the goals and objectives of the City of Muskegon Master Plan, the spirit of this Ordinance is to reduce, rather than increase, any nonconformance.

SECTION 2201: NONCONFORMING LOTS

When an existing nonconforming lot does not adjoin any other lot or lots under common ownership or if the nonconforming lot fails to meet the requirements for minimum lot area, minimum width, or both, of the zoning district in which it is located, such lot may be used for the permitted uses of the zoning district under the following conditions:

1. It must meet the definition of “Lot of Record” listed in the definitions of this Ordinance.
2. In any zoning district, where two or more adjoining nonconforming lots are under common ownership, these lots shall be combined and considered as one lot for the purposes of this ordinance.
3. The nonconforming lot must still meet setback requirements of its zoning district and is subject to certain limitations provided by other provisions of this Ordinance.

SECTION 2202: NONCONFORMING USES OF LAND

Where, at the effective date of adoption or amendment of this Ordinance, lawful use of land exists that is made unlawful under the terms of this Ordinance as enacted or amended, such use may be continued, so long as it remains otherwise lawful, subject to the following provisions:

1. Special land uses and use variances permitted by this ordinance shall not be deemed nonconforming uses.

2. Changes of tenancy, ownership or management of any existing nonconforming uses of land may be made, provided that there is no change in the nature or character of the nonconforming use.
3. No such nonconforming use shall be enlarged, increased, or extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance, except when authorized by the Planning Commission, after Public Hearing as required for Special Uses, and upon reaching a determination that the proposed enlargement, increase, or greater area:
 - a. Does not have a substantial detrimental effect on the use and enjoyment of adjacent uses or lots.
 - b. Complies with all parking, sign, or other applicable regulations applicable to accessory uses for the area affected by the proposed enlargement, increase, or greater area.
 - c. Complies with any reasonable conditions imposed by the Planning Commission that are necessary to ensure that the proposed enlargement, increase, or greater area will not prove detrimental to adjacent properties, the neighborhood, or the community.
 - d. It is not larger than twenty five percent (25%) of the original nonconforming area.
4. No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this Ordinance.
5. A nonconforming use of land, which has ceased for a period exceeding twenty-four (24) months or has been changed to a conforming, use may not again be devoted to a nonconforming use. A nonconforming use shall be determined to be abandoned if one (1) or more of the following conditions exists, and which shall be deemed to constitute an intent on the part of the property owner to abandon the nonconforming use;
 - a. Utilities, such as water, gas, and electricity to the property, have been discontinued.
 - b. The property, buildings and grounds have fallen into disrepair.
 - c. Signs or other indications of the existence of the nonconforming use have been removed.
 - d. Removal of equipment or fixtures which are necessary for the operation of the nonconforming use.
 - e. Other actions, which in the opinion of the Zoning Administrator, constitute an act or omission on the part of the property owner or lessee constituting an intent to abandon the nonconforming use.
6. When such nonconforming use is made more conforming than the use which previously existed, it may continue even though it does not totally conform to all provisions of this Ordinance.

SECTION 2203: NONCONFORMING STRUCTURES

Where a lawful structure exists at the effective date of adoption or amendment of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on area lot coverage, height, yards, parking or other characteristics of the structure or its location on the lot, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

1. No such structure may be enlarged or altered in a way which increases its nonconformity, except when authorized by the Planning Commission, after Public Hearing as required for Special Uses. The Planning Commission shall be authorized to determine the amount of enlargement of any building or structure, consistent with the intent of this article. The nonconforming structure may be changed to an extent not exceeding thirty percent (30%) of the total floor area of the existing building at the time of enactment of the Ordinance from which this chapter is derived, or at the time of its amendment making a structure nonconforming.
2. No nonconforming building or structure shall be moved in whole or part to any other location unless such building or structure and the off-street parking spaces, yard and other open spaces provided, are made to conform to all the regulations of the district in which such building or structure is to be located.
3. Changes of tenancy, ownership or management of any existing nonconforming structures may be made, provided that there is no change in the nature or character of the nonconforming structure.
4. Repair and maintenance work may be performed as required to keep a nonconforming building or structure in a sound condition.
5. In the event any nonconforming building or structure is damaged by fire, wind, civil disobedience, or an Act Of God or the public enemy, it may be rebuilt or restored, provided the cost of such structural alteration or structural repairs shall not exceed seventy-five (75) percent of it's replacement cost. The buildings or structures shall be built in conformance with the requirement of the zoning district in which they are located.
6. Once any nonconforming structure is removed from the property, its nonconforming status has expired and it may not be replaced on the property.

SECTION 2204: [RESERVED]

SECTION 2205: POWER OF CONDEMNATION

The City may acquire by purchase, by condemnation, or otherwise private property or an interest in private property for the removal of nonconforming uses and structures, except that the property shall not be used for public housing. The City Commission may provide that the cost

and expense of acquiring private property be paid from general funds, or the cost and expense, or a portion thereof, be assessed as a Special Assessment District. The elimination of nonconforming uses and structures in a zoned district is declared to be for a public purpose and for a public use.

The City Commission may institute and prosecute proceedings for the condemnation of nonconforming uses and structures under the power of eminent domain in accordance with the provisions of the City Charter relative to condemnation or in accordance with Act No. 87 of the Public Acts of 1980, being Section 213.51 et seq. of the Michigan Compiled Laws, or any other applicable statute.